IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01/04/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.285 of 1993

Anna Selvam Ammal .. Appellant

-Vs-

Ponnu Nadar .. Respondent

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree dated 3.2.1993 and made in A.S.No.39 of 1992 on the file of the Sub Court, Ambasamudram, confirming the judgment and decree dated 28.2.1989 and made in O.S.No.303/85 on the file of the District Munsif Court, Ambasamudram.

!For Appellant : Mr.G.Nagarajan

^For Respondent : Mr.T.M.Hariharan

:JUDGMENT

Aggrieved over the judgment of the learned Subordinate Judge, Ambasamudram, confirming the judgment of the trial Court namely the District Munsif Court of the said place in a suit for recovery of possession in respect of the first item and injunction in respect of the second item of the immovable properties, the defendant in the suit has brought forth this second appeal.

2. Short facts necessary for the disposal of this appeal are as follows:

The plaintiff Ponnu Nadar was of Christian religion and faith. His eldest son by name Daniel died 2 + years prior to the initiation of the proceedings. The defendant, daughter-in-law, was also living with him. The father of the plaintiff died 35 years ago, and the mother of the plaintiff also died a month ago prior to the litigation. The plaintiff and his sister were the only heirs of their parents. The first son of the plaintiff had no right in the properties. Despite the same, by way of abundant caution, a release deed, exhibited as Ex.A1, was obtained from him on 28.4.1981, and he executed the same by receiving a sum of Rs.5,000/-. On permission by the plaintiff, the daughter-in-law, the defendant, was occupying the first item of the property. The said permission was cancelled by way of a notice on 2.4.1 985. In the first item of property, there were row of shops, and they were kept under the lock and key by the plaintiff. While so, on 25 .3.1985, the

defendant broke open the lock and trespassed into the property. Under such circumstances, a police complaint was lodged, and enquiry was on. Hence, there arose a necessity for filing the suit for the said reliefs.

3. The suit was resisted by the defendant daughter-in-law stating that it is not correct to state that the plaintiff's family belonged to the Christian faith; but, they constituted a Hindu joint family; that there was no necessity for the husband to execute the alleged release deed; that it was tainted with invalidating factors; that they have been enjoying the first item of property, a house, as members of the joint family and also on their own right, and hence, no question of permission granted by the plaintiff, would arise; that the second item of property, a shop, was also in their occupation all along; that while so, by way of a coercive method to take the property from the hands of the defendant, this suit has been brought forth; that when a notice was issued, the defendant demanded rendition of accounts from the father-in-law; that aggrieved over the same, he has filed the instant suit, and hence, the suit was to be dismissed.

4. The trial Court framed the necessary issues, tried the suit and decreed the same. Aggrieved, the defendant took it on appeal. The first appellate Court, after framing the points for determination, affirmed the judgment of the trial Court granting the reliefs. The aggrieved defendant has brought forth this second appeal.

5. At the time of admission, the following substantial questions of law were formulated by this Court:

(1) Whether even assuming Ex.A1 is valid in law, still whether a Hindu joint family member can relinquish his right in favour of one person as against the ruling in 58 Law Weekly page 54?

(2) Whether the Courts below are right in holding that no steps were taken to cancel Ex.A1 while a document ab initio void do not require to be set aside in law as per the Division Bench judgment reported in 1990 II MLJ page 175?

6. This Court heard the learned Counsel for the appellant and also the learned Counsel for the respondent on those contentions.

7. The specific case of the plaintiff before the Courts below was that he was of Christian faith; that the properties belonged to his father; that himself and his sister were the heirs of their father; that on the death of the father, the properties came to his hands; that he got a release deed from his first son, though not necessary, by way of abundant caution, which was marked as Ex.A1; that on permission, the defendant has been in possession of the first item of property, a house, and was attempting to interfere in the possession of the second item of property, a shop, by the plaintiff, and hence, there arose a necessity for the suit. The suit was resisted by the defendant stating that it is not correct on the part of the plaintiff to state that he was of Christian faith; but, they constituted a Hindu joint family; that there was no necessity for her husband to execute a release deed as found under Ex.A1; that the document is tainted with invalidating factors, and hence, it is not valid; that no question of permission would arise, since they have been in enjoyment of the property on their own right, and hence, the plaintiff's claim was to be rejected. Both the Courts below have recorded a concurrent finding that the release deed executed by the husband of the defendant in favour of the plaintiff in respect of his right in the property was true, valid and genuine and was acted upon also. This Court is unable to notice any reason why the said finding in respect of the release deed has got

to be interfered with.
8. Needless to say that the terms in the said deed would be binding upon the executant namely the husband of the defendant. At this juncture, it has to be pointed out that the case of the plaintiff that he was of Christian faith, though accepted by the trial Court, the same was reversed by the first appellate Court stating that the finding of the trial Court was not correct and the same was to be set aside. The first appellate Court has given a finding that the parties did not belong to Christian faith. It was the case of the defendant before the Courts below that they belonged to Hindu joint family. However, this Court need not go into that question and decide as to which faith they belonged to, in view of the rival contentions put forth by both sides.
9. Now at this stage, according to the learned Counsel for the appellant, even assuming that Ex.A1 release deed was valid, since the properties were ancestral and the parties belonged to the Hindu faith and the husband of the defendant, at the time of his death, had two children, a male and a female born, and by operation of law also, they were also entitled to have their shares in the properties. Disputing the same, it is contended by the learned Counsel for the respondent that they were of Christian faith; that the properties exclusively belonged to the plaintiff, and hence, no one else including the children of the defendant, can make any claim over those properties. It is not a case, where the Court has to render judgment over the same. However, since it is a case for recovery of possession, the judgments of both the Courts below to the extent that Ex.A1 release deed would be binding on the husband of the defendant, and the same would also be binding on the defendant, alone have got to be sustained. At the same time, it is made clear that all the other questions as to which faith the parties belonged to, and whether the children of the deceased husband of the defendant could claim any right over the property are left open to be agitated in the proper forum

for the necessary reliefs in accordance with law.
10. Accordingly, this second appeal is dismissed, leaving the parties to bear their costs.

Index: yes
Internet: yes

To:

1. The Subordinate Judge
Ambasamudram
2. The District Munsif
Ambasamudram
3. The Record Keeper
V.R. Section
High Court, Madras.